

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

LISA N. ROY, ) Case No. C08-918-TSZ-BAT  
Plaintiff, )  
v. )  
ADIRONDACK MEDICAL CTR., et al., ) REPORT AND RECOMMENDATION  
Defendants. )

## INTRODUCTION

Plaintiff Lisa N. Roy, proceeding *pro se*, has filed an application to proceed *in forma pauperis* (“IFP”) in this proposed civil rights lawsuit against Adirondack Medical Center and the New York State Department of Labor.<sup>1</sup> (Dkt. No. 1). The complaint has not been served. Having reviewed plaintiff’s IFP application, proposed complaint, and the balance of the record, the Court recommends that her case be DISMISSED without prejudice for improper venue and her IFP application be DENIED as moot.

## **DISCUSSION**

Plaintiff's proposed complaint is very difficult to understand. It is a thirty-page compilation of handwritten pages and copies of miscellaneous documents, including letters

<sup>1</sup> The Court notes that this complaint is very similar to another complaint recently filed by plaintiff in *Roy v. Adirondack Medical Center*, Case No. C08-917-RSM-JPD.

01 from different agencies, papers related to plaintiff's former employment, and W-2 forms.  
02 Each document contains handwritten comments scrawled around the borders of the page or  
03 between paragraphs, making many pages impossible to read. Plaintiff appears to allege  
04 employment discrimination on the part of the Adirondack Medical Center and New York  
05 State Department of Labor. As discussed below, the complaint appears to have been filed in  
06 an improper venue.

07           Venue for civil actions such as this one is determined by 28 U.S.C. § 1391(b), which  
08 states:

A civil action wherein jurisdiction is not founded solely on diversity of citizenship may, except as otherwise provided by law, be brought *only* in (1) a judicial district where any defendant resides, if all defendants reside in the same State, (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated, or (3) a judicial district in which any defendant may be found, if there is no district in which the action may otherwise be brought.

<sup>13</sup> 28 U.S.C. § 1391(b) (emphasis added).

15        Here, each of the named defendants reside in the State of New York. Furthermore, all  
16 of the events or omissions giving rise to the claims in plaintiff's complaint appear to have  
17 occurred in New York. Accordingly, venue is not proper in the United States District Court  
18 for the Western District of Washington. Because the defendants reside in New York, and  
19 because all of the acts or omissions giving rise to plaintiff's claims occurred in New York,  
20 this action could have been brought in the United States District Court for the Northern  
21 District of New York.

## CONCLUSION

When, as here, a case is filed in the improper venue, the district court “*shall dismiss*, or if it be in the interest of justice, transfer such case to any district or division in which it could have been brought.” 28 U.S.C. § 1406(a) (emphasis added). Because it appears that dismissal would not prejudice plaintiff in any way, and a transfer does not appear to be in the

01 interest of justice, the Court recommends that this action be DISMISSED without prejudice  
02 for improper venue.<sup>2</sup> In addition, plaintiff's application to proceed *in forma pauperis* may be  
03 DENIED as moot. A proposed Order accompanies this Report and Recommendation.

04 DATED this 19<sup>th</sup> day of June, 2008.

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08 BRIAN A. TSUCHIDA  
United States Magistrate Judge  
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24       <sup>2</sup> In the alternative, and assuming venue was proper in this district, the Court would dismiss  
25 plaintiff's proposed complaint pursuant to 28 U.S.C. § 1915(e)(2)(B). The fact that plaintiff is not  
26 a prisoner would not change this result. *See Lopez v. Smith*, 203 F.3d 1122, 1129 (9th Cir. 2000)  
([S]ection 1915(e) applies to all in forma pauperis complaints, not just those filed by prisoners.”).